

TAYLOR *v.* ANDERSON.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF OKLAHOMA.

No. 338. Submitted April 30, 1914.—Decided May 25, 1914.

Whether a case begun in a District Court is one arising under the Constitution or a law or treaty of the United States in the sense of the jurisdictional statute (Judicial Code, § 24), must be determined from what necessarily appears in the plaintiff's statement of his own claim in the declaration unaided by anything alleged in anticipation or avoidance of defenses which may be interposed by defendant.

197 Fed. Rep. 383, affirmed.

THE facts, which involve the jurisdiction of the District Court of the United States under § 24, Judicial Code, are stated in the opinion.

Mr. Napoleon B. Maxey for plaintiffs in error.

Mr. H. A. Ledbetter for defendants in error.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

The judgment here under review is one of dismissal for want of jurisdiction. The action was in ejectment. The petition alleged that the plaintiffs were owners in fee and entitled to the possession; that the defendants had forcibly taken possession and were wrongfully keeping the plaintiffs out of possession, and that the latter were damaged thereby in a sum named. Nothing more was required to state a good cause of action. Snyder's Comp. Laws Okla., §§ 5627, 6122; *Joy v. St. Louis*, 201 U. S. 332, 340. But the petition, going beyond what was required, alleged

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with much detail that the defendants were asserting ownership in themselves under a certain deed and that it was void under the legislation of Congress restricting the alienation of lands allotted to the Choctaw and Chickasaw Indians. However essential or appropriate these allegations might have been in a bill in equity to cancel or annul the deed, they were neither essential nor appropriate in a petition in ejectment. Apparently, their purpose was to anticipate and avoid a defense which it was supposed the defendants would interpose, but, of course, it rested with the defendants to select their ground of defense, and it well might be that this one would not be interposed. In the orderly course, the plaintiffs were required to state their own case in the first instance and then to deal with the defendants' after it should be disclosed in the answer. *Snyder's Comp. Laws*, §§ 5634, 5642, 5668; *Boston &c. Mining Co. v. Montana Ore Co.*, 188 U. S. 632, 639. Diversity of citizenship was not alleged, and, unless the allegations respecting the invalidity, under the legislation of Congress, of the defensive claim attributed to the defendants operated to bring the case within the jurisdiction of the Circuit Court, the judgment of dismissal was plainly right.

It is now contended that these allegations showed that the case was one arising under the laws of the United States, namely, the acts restricting the alienation of Choctaw and Chickasaw allotments, and therefore brought it within the Circuit Court's jurisdiction. But the contention overlooks repeated decisions of this court by which it has become firmly settled that whether a case is one arising under the Constitution or a law or treaty of the United States, in the sense of the jurisdictional statute (now § 24, Judicial Code), must be determined from what necessarily appears in the plaintiff's statement of his own claim in the bill or declaration, unaided by anything alleged in anticipation of avoidance of defenses which

it is thought the defendant may interpose. *Tennessee v. Union and Planters' Bank*, 152 U. S. 454, 460, 464; *Third Street Railway Co. v. Lewis*, 173 U. S. 457, 460; *Florida Central Railroad Co. v. Bell*, 176 U. S. 321, 329; *Boston &c. Mining Co. v. Montana Ore Co.*, *supra*; *Joy v. St. Louis*, *supra*; *Devine v. Los Angeles*, 202 U. S. 313, 333; *Louisville & Nashville Railroad Co. v. Mottley*, 211 U. S. 149; *Shulthis v. McDougal*, 225 U. S. 561, 569; *Denver v. New York Trust Co.*, 229 U. S. 123, 133-135. Tested by this standard, as it must be, the case disclosed by the petition was not one arising under a law of the United States.

Whether or not in other respects the plaintiffs overlooked an authorized mode of securing relief to which they may be entitled need not now be considered. See 35 Stat. 312, 314, c. 199, § 6; *Bowling v. United States*, 233 U. S. 528, and cases cited.

Judgment affirmed.
